IN THE HIGH COURT OF JUDICATURE OF BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.2579 OF 2007

Hindustan Lever Employees' Union ..Petitioner.

V/s.

M/s.Hindustan Lever Ltd. ..Respondent.

Mr.R.D.Bhat for petitioner.

Mr.R.N.Shah, Counsel with Pallavi Dedhia i/b. Sanjay Udeshi & Co. for respondent.

CORAM: A.M.KHANWILKAR,J

DATE : DECEMBER 14, 2007.

P.C. :

1. Heard Counsel for the parties. This Writ Petition is challenging the Order passed by the Labour Court, Mumbai dated 22nd August, 2007 passed below Exh.U-13 in Reference (IDA) No. 415 of 2003. By the said Application Exh.U-13, the Petitioner urged upon the lower Court that there was no need of going into issue Nos. 1,2 and 3 as framed on 4th February, 2006, as those issues were unnecessary and redundant. The Court below has rejected that application for reasons recorded in the impugned order. Before proceeding further, it becomes apposite to advert to the issue framed by the lower Court under Order dated 4th February, 2006. The same reads thus:

"1. Does the Second party prove that the enquiry conducted by the first party was not fair & proper ?

2. Does he prove that the findings of the enquiry officer are perverse ?

3. Whether Punishment awarded to the Second Party is grossly disproportionate ?

4. Whether Second Party is entitled to get reinstatement with full back wages & continuity of Services w.e.f.31.12.2001 ?

5. What Award ?"

2. If the Petitioner's request was to be accepted by the lower Court, nothing further would remain in the proceeding pending before the lower Court. The only other issue that would remain for consideration is issue No.4. In so far as issue No.4 is concerned, that is essentially with reference to the nature of relief, to be granted to the concerned party. However, before answering that issue, it would be necessary for the labour Court to examine the contention raised on behalf of the Petitioner that the Respondent has failed to comply with the mandatory requirement of Section 33(2)(b) of the Industrial Dispute Act, 1947. As a result whereof, the Order of termination becomes nonest in the eyes of law. This position is expounded by the Constitution Bench of the Apex Court in the case of **Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd. V/s.**

Shri Ram Gopal Sharma & Ors. [2002 I CLR 789]. The appropriate course for the Petitioner would have been to call upon the lower Court to frame necessary preliminary issue in the context of the argument raised and to decide the said issue in accordance with the law in the first instance, before investigating into issues formulated as Issue Nos. 1, 2 and 3. That is so because, if the Petitioner was to succeed on that contention, as a necessary corollary, the lower Court would have no option, but to grant relief of reinstatement and pass consequential order in favour of the Petitioner, which would answer the Issue No.4, as framed.

3. In the circumstances, without expressing any opinion on the merits of the contention, as to whether the termination order passed against the Petitioner is null and void, the Petitioner may be free to apply before the Labour Court to frame appropriate issue and if such application is moved, the Labour Court may consider the same in accordance with the law.

4. The case of the Petitioner is that the Respondent has admitted the fact that the procedure under section 33(2)(b) of the Act has not been

complied, for which reliance is placed on averment in paragraph-13 of the Written Statement at page 44 of the paper book. On the other hand, according to the Counsel for the Respondent, averments in paragraph-13 are in no way admission of that factual position. However, in fact, the Respondent has applied for approval before the appropriate authority, as is stated in the paragraph-3 of the reply filed by the Respondent to the Review Application taken out by the petitioner against the Order dated 9th January, 2006. All these aspects will have to be considered by the trial Court as and when occasion arises. The trial Court will be free to also consider argument of the Respondent that the the Labour Court will have no jurisdiction to answer such issue. All questions in that behalf are left open.

5. With the above observations, this Petition is disposed of.

(A.M.KHANWILKAR,J)